USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ____
DATE FILED: 1/14/10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EUGENE LUMLEY, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiffs,

-against-

UNITED STATES TRUST COMPANY, N.A., BANK OF AMERICA, N.A. and JOHN DOES #1-10, Jointly and Severally,

Defendants.

ECF
08 CV 3993 (TPG) (AJP)

ORDER FOR FINAL JUDGMENT OF DISMISSAL OF CLASS ACTION WITH PREJUDICE

This matter having come before the Court on the application of the parties for approval of the settlement set forth in the Settlement Agreement dated June 23, 2009 and the exhibits annexed thereto (the "Agreement") relating to the above-captioned class action, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed of the premises and good cause appearing therefore, it is this 14th day of January, 2010:

ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of this litigation, and over all parties to this litigation, including all Members of the Class.

2. For purposes of this Order and Final Judgment, the Court adopts and incorporates the definitions set forth in the Agreement.

3. This Court hereby approves the settlement set forth in the Agreement and finds that said settlement is, in all respects, fair, reasonable, adequate and in the best interests of the Class in accordance with Rule 23(e) of the Federal Rules of Civil Procedure and 29 U.S.C. section 216, as appropriate, and directs implementation of all its terms and provisions, including the payment of legal fees and expenses as Settlement Administrator to Plaintiff's attorneys in a total amount of One Hundred and Fifty Thousand Dollars and No Cents ($150,000.00) and payment of an incentive bonus to the Named Plaintiff Eugene Lumley in the amount of Ten Thousand Dollars ($10,000).

4. The Court hereby dismisses with prejudice and without costs Plaintiff's Complaint and all Claims asserted therein.

5. Plaintiff and all other Members of the Class who have not properly and timely exercised their opt-out rights in this lawsuit, or have exercised their opt-in rights as appropriate, are hereby conclusively deemed to have released or discharged the Released Parties from, and are permanently enjoined and barred from asserting, either directly or indirectly, against the Released Parties, any and all Claims. All such matters are hereby finally concluded, terminated and extinguished. No Class members have properly and timely excluded themselves from this settlement.

6. The notice given to Members of the Class fully and accurately informed the Members of the Class of the proposed settlement, was the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to all Members of the Class, complying fully with Rule 23 of Federal Rules of Civil Procedure, the Fair Labor Standards Act,

29 U.S.C. section 201, *et seq.*, the United States Constitution, and any other applicable laws, as appropriate.

7. Without affecting the finality of this judgment in any way, this Court hereby retains jurisdiction over consummation and performance of the Agreement.

8. The above-captioned action is hereby dismissed in its entirety, with prejudice to Plaintiff and Members of the Class, and with no further award of attorneys' fees or costs or expenses by the Court, except as awarded herein. LET JUDGMENT BE ENTERED ACCORDINGLY.

So Ordered and Entered:

Thomas P. Griesa

United States District Judge

Dated: January 14, ~~2009~~ 2010

OHS West:260673819.1